

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

J & L Partnership :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1968, 1969 & 1970. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of March, 1981, he served the within notice of Decision by certified mail upon J & L Partnership, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J & L Partnership
c/o Keeler, Phibbs & Co.
306 E. Market St.
Harrisonburg, VA 22801

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
13th day of March, 1981.

Ernest A. Hagellund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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for the Years 1968, 1969 & 1970. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of March, 1981, he served the within notice of Decision by certified mail upon Peter Van N. Lockwood the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Peter Van N. Lockwood
Caplin & Drysdale
1101 Seventeenth St. N.W.
Washington, DC 20036

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
13th day of March, 1981.

Gennie A. Hogeland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 13, 1981

J & L Partnership
c/o Keeler, Phibbs & Co.
306 E. Market St.
Harrisonburg, VA 22801

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 722 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Peter Van N. Lockwood
Caplin & Drysdale
1101 Seventeenth St. N.W.
Washington, DC 20036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
J & L PARTNERSHIP
for Redetermination of a Deficiency or
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the
Years 1968, 1969 and 1970. :

DECISION

Petitioner, J & L Partnership, c/o Keeler, Phibbs & Co., 306 East Market Street, Harrisonburg, Virginia 22801, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969 and 1970 (File No. 01281).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 16, 1978 at 9:15 A.M. Petitioner appeared by Caplin & Drysdale, Esqs. (Peter Van N. Lockwood, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether intangible drilling and development expenses paid by petitioner in connection with its interest in a Venezuelan oil and gas well venture may properly be taken as a deduction for unincorporated business tax purposes.

FINDINGS OF FACT

1. Petitioner, J & L Partnership, filed unincorporated business tax returns for 1968, 1969 and 1970.
2. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes with a Notice of Deficiency against petitioner for 1968, 1969 and 1970 for unincorporated business taxes due in the amount of \$48,374.22, plus interest

of \$9,001.32, for a total of \$57,375.54.

3. Petitioner timely filed a petition for redetermination of deficiency, contesting the disallowance by the Income Tax Bureau of a business deduction for a loss which arose from an investment in the "Home-Stake Production Company 1970 Program" joint venture, which loss amounted to \$800,000.00.

4. J & L Partnership ("J & L") was the trade name of a partnership business operated by James H. Leachman and Leland L. Leachman, both of whom resided in New York. J & L was organized in 1965 and was principally engaged in cattle farming and in the investment of partnership earnings from cattle farming. From 1967 until June, 1969, J & L maintained its offices at Rhinebeck, New York. In 1969, J & L sold all of its cattle holdings pursuant to installment sales contracts and reported earnings therefrom on its unincorporated business tax returns for 1969 through 1973. J & L reported its income without allocation.

5. In 1970, for a total consideration of \$800,000.00, petitioner acquired forty participating units in the Home-Stake Production Company 1970 Program ("1970 Program"), which represented an undivided ownership, in the proportion 40/914 (the proportion petitioner's investment bore to the total number of participating units), in 75½ percent of the working interest of certain Venezuelan oil-bearing properties. The remaining 24½ percent of the working interest was owned by Home-Stake 1970 Program Operating Corporation ("Operator"), the operator of the 1970 Program.

The consideration paid comprised petitioner's proportionate part of the intangible drilling and development costs for the 1970 Program.

6. The 1970 Program was a joint venture treated as a partnership for Federal income tax purposes. The Operator and the 1970 Program were both headquartered at Tulsa, Oklahoma.

7. The agreement entered into by petitioner and the Operator provided, in part:

"It is understood that you [petitioner] shall own, and may take in kind, or dispose of, your proportionate part of all production from all of the Joint Venture properties. However, until otherwise instructed by you, Home-Stake shall be authorized to enter into sales contracts for the sale of your share of the production arising from the properties for such periods of time as are consistent with the minimum needs of the industry, but not to exceed one year."

However, none of the participants ever exercised this option to take production in kind from the oil and gas operations, possibly for the reason that oil and gas operations could only be conducted by a concessionaire licensed by the Venezuelan government.

8. Petitioner, on its 1970 New York State Partnership Return, deducted as a business expense the \$800,000.00 it paid in intangible drilling and development costs.

In 1971 and 1972, J & L received income in the amounts of \$52,880.00 and \$8,959.00, respectively, from its interest in the 1970 Program, which it reported in its partnership returns for said years.

9. The Audit Division disallowed the aforementioned deduction on the ground that the expenses were incurred in connection with a business carried on outside New York State.

10. On October 31, 1972, the Internal Revenue Service issued Audit Changes for the years 1967 through 1970, in which it decreased farm losses reported by petitioner and disallowed the \$800,000.00 deduction petitioner had taken for intangible drilling expenses. Petitioner has filed a petition with the U.S. Tax Court contesting the proposed disallowance of said drilling expenses. No resolution of that issue has yet been made.

CONCLUSIONS OF LAW

A. That the intangible drilling and development expenses paid by petitioner, as a participant in the Home-Stake Production Company 1970 Program Joint Venture, are disallowed since said expenses were attributable to "real property" located outside New York State within the meaning and intent of section 707(e) of the Tax Law.

B. That the petition of J & L Partnership is denied and the Notice of Deficiency issued on April 12, 1974 is sustained.

DATED: Albany, New York

MAR 13 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER